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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

RONALD S. WEILER et al.,  
Plaintiffs and Respondents,  
v.  
ALFEO J. MATTEI et al.,  
Defendants and Appellants.

A152322

(Sonoma County  
Super. Ct. No. SCV251486)

Defendants Alfeo and Leann Matteis' attorney, Steven Pabros, seeks reversal of a trial court order imposing monetary sanctions on him for failing to promptly notify the court of the death of his client Alfeo Mattei. Pabros contends the sanctions were in reality an invalid attorney's fees award. He further contends that even if authorized, the sanctions award was excessive and unreasonable. We affirm.

**BACKGROUND**

Some of the relevant facts arise from a previous appeal, so we take them from our previous unpublished opinion in *Weiler v. Mattei* (June 6, 2016, A143063, A144197).

Ronald and Lisa Weiler operated an antique shop in Sebastopol that they leased from Alfeo and Leann Mattei, as trustees of the Alfeo and Leann Mattei Trust (the Matteis). The antique shop was next door to another property owned by the Matteis and leased by Justin McGrath, who operated a business selling and recycling the contents of auctioned storage units. In July 2011, a fire started in McGrath's yard and spread to the Weilers' store, damaging and destroying much of its contents.

In April 2012, the Weilers sued the Matteis for negligence. Their complaint alleged the Matteis knew the conditions in McGrath's yard posed a fire hazard but failed to do anything to remediate it.

The Matteis cross-complained for express indemnity against the Weilers. The cross-complaint alleged any injuries the Weilers sustained were due to their own negligence. It further alleged the Weilers' written lease with Mr. Mattei "provided that Mattei shall not be liable for any damage or injury to [the Weilers], or any other person, or to any property, occurring on the demised premises or any part thereof, and [the Weilers] agree to hold harmless Mattei from any claims for damages, no matter how caused." The cross-claims were severed while the Weilers' complaint proceeded to trial.

In December 2013, a jury found the Matteis liable and awarded the Weilers \$94,108 for negligence and premises liability and \$1,828.33 for breach of contract. The jury also found the Matteis' negligence was "passive." The Weilers moved for partial judgment notwithstanding the verdict (JNOV) to reverse the finding of passive negligence. The trial court granted the motion and determined the Matteis' negligence was active, not passive, as a matter of law. The Weilers then moved for judgment on the pleadings on the Matteis' cross-complaint for indemnity, and the court determined the Matteis' indemnity was precluded by active negligence. In June 2014, judgment was entered for the Weilers, and the Matteis' cross-complaint was dismissed with prejudice. In September 2014, the Matteis appealed the judgment.

While the appeal was pending in this court, Alfeo Mattei died in January 2016. The case continued to be litigated without notice to the courts of Mr. Mattei's death until more than a year had passed.

In March 2016, we heard oral argument on the Matteis' appeal. In June 2016, we issued our unpublished opinion in *Weiler v. Mattei*, *supra*, A143063, A144197. We reversed the order granting the partial JNOV and motion for judgment on the pleadings and remanded the case to the trial court for further proceedings with a direction to reinstate the jury's finding of passive negligence. We affirmed the judgment in all other respects.

Following our remand, the parties litigated the Matteis' cross-complaint for indemnity. The Weilers again moved for a judgment on the pleadings but were unsuccessful. After the trial court permitted another amendment of the cross-complaint, the Weilers moved for summary judgment in part on the ground that the lease did not provide indemnity to the Matteis. That, too, was unsuccessful. The trial court found at minimum a disputed issue of material fact with respect to the parties' intentions as to the indemnity provision in the lease. The matter proceeded to trial.

In April 2017, counsel for the Weilers observed that Mr. Mattei had not attended any of the trial proceedings, nor did he appear on any witness list submitted by the Matteis' counsel. Counsel's inquiries to Pabros about Mr. Mattei went unanswered. During the third day of trial, the Weilers' counsel searched online for information about Mr. Mattei and discovered a probate notice for an Alfeo Mattei. He advised the court of this discovery. The court asked Pabros if Mr. Mattei was deceased, and Pabros responded that Mr. Mattei "ha[d] passed, yes." The court vacated the trial and allowed Pabros to amend the cross-complaint, which would allow him to identify the correct parties.

In June 2017, the Weilers filed a motion for "monetary sanctions against Steven Pabros" due to Pabros's failure to promptly notify the court and opposing counsel of Mr. Mattei's death. The motion was based on the Superior Court of Sonoma County, Local Rules, rules 4.1(A)(4) and 4.5; the California Rules of Court, rule 2.30; and Code of Civil Procedure section 575.2. The Weilers argued that because Pabros continued to litigate the case for over a year before disclosing Mr. Mattei's death, the Weilers were severely prejudiced and forced to incur attorney's fees and costs they would not have incurred had Pabros complied with the rules. The Weilers requested that Pabros be ordered to pay their reasonable expenses and attorney's fees in connection with the litigation activities that occurred after Mr. Mattei's death. For instance, the Weilers asked for the \$4,280 incurred in expenses and attorney's fees on the motion for judgment on the pleadings, which would not have been filed had they known Mr. Mattei was deceased. The Weilers declared they spent \$57,386.54 on reasonable expenses and

attorney's fees in connection with preparing for and attending trial for three days on the Matteis' cross-complaint, only to have the court continue the case to allow Pabros to amend upon learning of Mr. Mattei's death. They also asked for \$7,170 as the reasonable expenses and attorney's fees incurred in connection with their motion for sanctions. In total, the Weilers sought \$100,146.86.

In its tentative ruling, the court granted the sanctions request and ordered Pabros to pay the Weilers \$35,323.27. At the hearing, the trial court explained its tentative award included all the attorney's fees the Weilers incurred for their motion for judgment on the pleadings, half of the fees they incurred for preparing for and attending trial, and all their fees related to their sanctions motion. It did not include any fees from their summary judgment motion or their work to investigate Mr. Mattei's death.

Pabros opposed the court's tentative award. He explained that his failure to notify the court of Mr. Mattei's death at an earlier date "was due to inadvertence and was not done to delay the case or trial in this matter" and "[there] was no intent to harass, cause delay, or increase the cost of litigation." He raised for the first time at the hearing *Sino Century Development Limited v. Farley* (2012) 211 Cal.App.4th 688 (*Sino*) to support his position that the court's tentative ruling on sanctions could not be imposed. The court ordered the Weilers to provide supplemental briefing to address *Sino*. Before argument concluded, the Weilers' counsel stated, "[I]f the *Sino* case in fact stand[s] for the proposition that the Court is not in a position to award attorney fees for all of the trial time and all of the award that the Court was tentatively going to provide, we would request that the Court sanction Mr. Pabros in the amount of \$35,000, not as attorney fees."

The court questioned Pabros on when he learned of Mr. Mattei's death. Pabros informed the court that "[i]t was some time earlier this year [2017] . . . that we got information he had passed."

In its final order, the court acknowledged the Weilers' calculation of \$100,146.86 in sanctions was based on the attorney's fees they believed they unnecessarily incurred as a result of Pabros's conduct. The court deemed that request excessive. The court granted

the Weilers' sanctions motion against Pabros and ordered him to pay \$31,160 to the Weilers, which included \$25,000 in sanctions plus \$6,160 in attorney's fees and costs to bring the sanctions motion. The court explained: "In this case, the Court finds that Mr. Pabros' violation of Local Rule 4.1(A) was particularly egregious in that Mr. Pabros continued to litigate this case, in the trial court and the appellate court, for over a year after his client had died, without informing Plaintiffs' counsel or the Court. Additionally, the Court finds it even more troubling that at the June 28, 2017 hearing, Mr. Pabros could not answer the Court's obvious question of when and under what circumstances Mr. Pabros had learned of his client's death. The Court still finds it incredible that counsel, faced with a request for over \$100,000 in sanctions and a tentative ruling imposing sanctions of \$35,000, would not show up for the hearing with the who, what, where, when, why, and how he came to know of the passing of his client. Based on those factors, as well as the fact that this violation resulted in the needless expenditure of substantial Court resources, the Court concludes that this award of sanctions is warranted." Pabros appeals the sanctions order.

## **DISCUSSION**

### **I. Standard of Review**

"We generally review orders for monetary sanctions under the deferential abuse of discretion standard." (*Martorana v. Marlin & Salzman* (2009) 175 Cal.App.4th 685, 698; *Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 977 (*Caldwell*)). "To the extent that we are called upon to interpret the statutes relied on by the trial court to impose sanctions, we apply a de novo standard of review. [Citation.]" (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1479.)

### **II. The \$6,160 Attorney's Fees Award**

Pabros does not dispute the propriety of the \$6,160 award of attorney's fees the court ordered for the Weilers' preparation of the sanctions motion. He states he "does not challenge the trial court's award of sanction motion fees . . . ." We shall neither review nor disturb this part of the trial court's order.

### **III. The \$25,000 Sanctions Award**

#### *A. The sanctions penalty was not an attorney's fees award.*

Pabros's primary argument in this appeal is that the \$25,000 sanctions award the trial court ordered him to pay the Weilers was really an improper attorney's fees award disguised as sanctions. We disagree.

The Weilers' motion expressly requested "monetary sanctions" against Pabros. They filed the motion pursuant to the Superior Court of Sonoma County, Local Rules (Local Rule(s)), rules 4.1(A)(4) and 4.5; Code of Civil Procedure section 575.2 (Section 575.2), subdivision (a); and the California Rules of Court, rule 2.30 (Rule 2.30). Collectively, these provisions authorize the sanctions awarded them.

Local Rule 4.1(A)(4) states: "When a party to a case dies, the attorney for that party shall promptly serve and file a notice with the court." (Super. Ct. Sonoma County, Local Rules, rule 4.1(A)(4).) Local Rule 4.5 states: "Failure to comply with these rules or with the California Rules of Court may result in the imposition of sanctions. [¶] In the event that any attorney, any party represented by counsel, or any party appearing in pro per fails to comply with any of the requirements of, or orders made, pursuant to Rules 2, 4, 5, 7 or 9, or the California Rules of Court, the Court may impose sanctions upon motion of a party or on its own motion. Sanctions may be imposed pursuant to Government Code Section 68609(d); Code of Civil Procedure Sections 128.5, 128.7, 177.5, 575.2, and California Rules of Court, Rule 2.30." (Super. Ct. Sonoma County, Local Rules, rule 4.5.)

Section 575.2, subdivision (a) states: "Local rules promulgated pursuant to Section 575.1 may provide that if any counsel, a party represented by counsel, or a party if in pro se, fails to comply with any of the requirements thereof, the court on motion of a party or on its own motion may strike out all or any part of any pleading of that party, or, dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, and may order that party or his or her counsel to pay to the moving party the

reasonable expenses in making the motion, including reasonable attorney fees.” (Code Civ. Proc., § 575.2, subd. (a).)

Rule 2.30 provides: “In addition to any other sanctions permitted by law, the court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or an aggrieved person, or both, for failure without good cause to comply with the applicable rules.” (Cal. Rules of Court, rule 2.30(b).) “In addition to the sanctions awardable under (b), the court may order the person who has violated an applicable rule to pay to the party aggrieved by the violation that party’s reasonable expenses, including reasonable attorney’s fees and costs, incurred in connection with the motion for sanctions or the order to show cause.” (Cal. Rules of Court, rule 2.30(d).)

Here, there is no dispute that Pabros failed to comply with his obligation to promptly notify the court and the Weilers of Mr. Mattei’s death as required by Local Rule 4.1(A)(4). Local Rule 4.5 authorizes the imposition of sanctions for his noncompliance. (Super. Ct. Sonoma County, Local Rules, rule 4.5.) In addition, the applicable local rules separately authorize the court to impose sanctions under Section 575.2 and Rule 2.30. (*Ibid.*) Section 575.2, subdivision (a) states that if an attorney fails to comply with local rules, the court on motion of any party, may impose issue or terminating sanctions against that party, or “impose other penalties of a lesser nature as otherwise provided by law . . . .” (Code Civ. Proc., § 575.2, subd. (a).) “Monetary sanctions are penalties of a lesser nature than dismissal.” (*Rietveld v. Rosebud Storage Partners* (2004) 121 Cal.App.4th 250, 257.) Rule 2.30 allows the court to order a person to pay reasonable monetary sanctions to an aggrieved person for failing to comply with the applicable rules. (Cal. Rules of Court, rule 2.30(b).) We agree with the trial court that these authorities permitted the trial court to impose the sanctions award against Pabros. There was no abuse of discretion.

Nor was the \$25,000 penalty really an award for attorney’s fees. Pabros contends the trial court awarded only the attorney’s fees his underlying rule violation caused the Weilers to spend. Pabros is mistaken. While the sanctions award in the trial court’s

tentative order correlated with the Weilers' requested fees, that was not the court's ultimate award. The final order from which Pabros appeals sets forth clearly that it includes \$25,000 in sanctions and a separate \$6,160 in attorney's fees related to the sanctions motion. Clearly, the trial court reconsidered its tentative decision, and instead of awarding solely attorney's fees or causation fees, it formulated a penalty that was part attorney's fees but mostly sanctions. Pabros's persistent statement that the \$25,000 penalty was really an attorney's fees award mischaracterizes this record.

The trial court's explanation for its ruling underscores that the sanctions were no longer tethered to the Weilers' attorney's fees. In justifying the award, the court certainly noted Pabros's litigation of the case for over a year after Mr. Mattei's death without informing counsel or the courts. Beyond this, however, the court "[found] it even more troubling that . . . Pabros could not answer the [c]ourt's obvious question of when and under what circumstances Mr. Pabros had learned of his client's death." It also found it "incredible" that Pabros, when faced with a request for over \$100,000 in sanctions, "would not show up for the hearing with the who, what, where, when, why, and how he came to know of the passing of his client." Moreover, the court found Pabros's violation "resulted in the needless expenditure of substantial [c]ourt resources . . . ." Based on these combined factors, mostly unrelated to the Weilers' attorney's fees, the trial court justified the sanctions.

Pabros claims *Sino*, *supra*, 211 Cal.App.4th 688 controls the case and requires reversal. It does not. In *Sino*, the court imposed \$81,461.13 in sanctions on defendant Farley and his lawyer because they violated Rule 2.30 by failing to notify the court that the case was automatically stayed because Farley had filed for bankruptcy. (*Id.* at pp. 692–693.) The award represented attorney's fees in preparing the sanctions motion and preparing for and attending trial. (*Id.* at p. 693.) Like Pabros, the *Sino* appellants conceded that the trial court did not err in awarding \$5,650 in fees incurred to prepare the sanctions motion but attacked the remaining \$75,811.13 as improper attorney's fees. (*Id.* at pp. 693–694, 699.) The Court of Appeal concluded that Rule 2.30 did not authorize full compensation of all attorney's fees incurred as a result of a rule violation but only



authorized the court to award reasonable attorney's fees incurred in connection with the proceeding in which the aggrieved party seeks sanctions. (*Id.* at pp. 697–699.) The appellate court reversed the sanctions order to the extent it improperly awarded attorney's fees as sanctions for violating a rule of court. (*Id.* at p. 701.) *Sino* does not control here. The penalty against Pabros was split between sanctions (\$25,000) and attorney's fees incurred in preparing the sanctions motion (\$6,160).

Pabros claims the Weilers' "last minute" request to the court to "transform their motion seeking only attorney's fees into one for 'sanctions' . . . cannot be condoned, despite the fact the trial court adopted it." Again, Pabros mischaracterizes the Weilers' motion. Their motion, as noticed and captioned, clearly sought "monetary sanctions." It is disingenuous for Pabros to say the motion sought only attorney's fees. Further, instead of requesting that the court "transform" the motion, the Weilers' counsel, in light of *Sino*, requested that the court consider sanctioning Pabros \$35,000 and award not as attorney's fees if *Sino* did not allow the court's tentative award. There was nothing untoward about the request, or the trial court's exercise of discretion to alter its tentative ruling.

Pabros's other arguments are readily dismissed. He contends the Weilers' relief is governed by the contents of the notice of motion and motion, which he says hinged on Rule 2.30 and was based on six separate categories of attorney's fees. As discussed earlier, the motion expressly sought sanctions. Further, Rule 2.30 was not the only basis for the award, and Pabros has not made any argument that the other authorities invoked by the Weilers independent of Rule 2.30 were inadequate.

Pabros observes that the Weilers did not seek relief under Code of Civil Procedure section 128.7 or any other Code of Civil Procedure or Government Code provision and adds the trial court did not issue an order to show cause. But he fails to argue the significance of such omissions or how they resulted in an erroneous trial court sanctions award. "An appellate court is not required to consider alleged errors where the appellant merely complains of them without pertinent argument." (*Strutt v. Ontario Sav. & Loan Assn.* (1972) 28 Cal.App.3d 866, 873–874.) "Where a point is merely asserted by appellant's counsel without any argument of or authority for the proposition, it is deemed

to be without foundation and requires no discussion by the reviewing court.” (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647 (*Atchley*).)

Pabros also notes that the courts have “established a working hierarchy defining the impact and effect of state statutes, state rules of court, and local court rules.” He points out that the Local Rules are authorized so long as they are consistent with higher authority, including the California Rules of Court, but are invalid if they conflict. Beyond this statement of the obvious, Pabros fails to develop any cogent argument that the applicable local rules somehow conflict with the rules of court and preclude the sanctions awarded. Again, we pass on the argument without consideration. (See *Atchley, supra*, 151 Cal.App.3d at p. 647.)

*B. The \$25,000 sanctions award was not excessive.*

Pabros contends that even if sanctions were authorized, the \$25,000 penalty was excessive and unreasonable. He calls the award “an excessive penalty for the violation of a local rule” and asserts that other than the Weilers’ claimed attorney fees, “there is no other basis upon which an award of that size for a violation of this type can be reconciled.” We are not persuaded.

Pabros notes the Weilers did not cite case law in their trial court motion in support of sanctions. This is irrelevant. The Weilers cited statutory authority which provides sufficient grounds for the penalty imposed. On appeal, it is Pabros’s burden to show reversible error or an abuse of discretion in the size of the sanctions order. A general principle of appellate practice is that the lower court order is presumed to be correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) The appellant must affirmatively show error. (*Ibid.*) It is Pabros’s burden to persuade us with authorities and argument that support his claim of error. He does not carry that burden by distinguishing the cases the Weilers relied upon in the trial court.

Pabros further observes the \$25,000 sanctions is “ten times the amount awarded” in *Caldwell, supra*, 222 Cal.App.3d at pp. 978–979. Pabros’s comparison to *Caldwell*, to suggest his penalty is unreasonable, is both unclear and misplaced. There, the trial court ordered Caldwell to pay \$2,500 in sanctions, simply stating there was “[g]ood [c]ause” to

justify the sanctions pursuant to Code of Civil Procedure section 177.5 for failure to comply with a court order. (*Id.* at p. 975.) Contrary to Pabros’s characterization, *Caldwell* reversed the sanctions because they exceeded the statutory maximum in Code of Civil Procedure section 177.5 and the trial court’s limited “[g]ood [c]ause” rationale was an inadequate justification. (*Id.* at p. 977.) Other than pointing out the difference in the amount of the sanctions imposed, Pabros fails to explain how *Caldwell* makes the sanctions against him unreasonable.

Pabros was ordered to pay 10 times the amount originally ordered by the trial court in *Caldwell*, but so what? Unlike *Caldwell*, the sanctions awarded here were not constrained by a statutory limit other than reasonableness, and Pabros sets forth no argument that the trial court’s rationale was inadequate. Pabros has not persuaded us that the \$25,000 sanctions award was unreasonable.

Pabros’s remaining arguments attacking the scope of the sanctions stem from his unwavering but incorrect view that the penalty was really an attorney’s fees award. These arguments simply rehash earlier ones, and we reject them for the reasons explained above.

*C. The \$25,000 sanctions award was not an undeserved windfall to the Weilers.*

Pabros also argues the trial court’s order results in an “undeserved windfall” to the Weilers. This contention is based on Pabros’s view that the sanctions award represents a “double recovery” to the Weilers, who successfully collected attorney’s fees for work in the sanctions motion. He excoriates a “\$25,000.00 windfall” added to their growing list of fee awards. He also concludes the only reason the Weilers would spend \$6,000 to \$7,000 to obtain an order confirming his violation of a local court rule was to punish him and to obtain this undeserved windfall.

Based on Pabros’s opening brief, it is not clear whether Pabros is targeting the \$25,000 in sanctions or the \$6,160 awarded in attorney’s fees for preparing the sanctions motion, or both as an undeserved windfall. His reply clarifies that while he “does question the need for the sanctions motion,” he “does not challenge the trial court’s award of sanction motion fees . . . .” Accordingly, this windfall argument appears to be

directed to the \$25,000 penalty. Since we have refuted Pabros's argument that the \$25,000 in sanctions are really attorney's fees, we need not provide further analysis.<sup>1</sup>

*D. Pabros's due process rights were not violated.*

Pabros further contends the award "violates due process in that it constituted an award that contradicted the entirety of [the] Weilers' factual showing," which correlated their requested sanctions with attorney's fees. He says he "[c]ertainly . . . had no expectation that [the] Weilers would seek, and the trial court would award, the sum of \$25,000.00 as an independent penalty for violating a local rule of court for failing to notify the court of the death of a client." We disagree.

"Inherent in our review of the exercise of discretion in imposing monetary sanctions is a consideration of whether the court's imposition of sanctions was a violation of due process. [Citation.] Due process principles require fair warning and an opportunity to be heard." (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 501.) Pabros had both. The Weilers' motion alerted Pabros they were seeking approximately \$100,000 in sanctions based on Local Rules 4.1(A)(4) and 4.5, Rule 2.30, and Section 575.2. Although he did not timely oppose the motion, the court allowed Pabros oral argument, during which he cited *Sino* for the first time. In response to *Sino*, the Weilers requested in open court that the court issue a \$35,000 sanction award "not as attorney[']s fees." This request was repeated in their supplemental briefing. Pabros filed a supplemental opposition, which the court read and considered. There was no due process violation.

**IV. The Weilers' Judicial Notice Request and  
Code of Civil Procedure Section 909 Motion**

Finally, the Weilers have requested we take judicial notice of a State Bar of California Stipulation Re Facts, Conclusions of Law and Disposition and Order Approving Actual Suspension filed on January 15, 2019. They have also moved pursuant

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<sup>1</sup> Pabros's unopposed request for judicial notice of one of the Weilers' past motions for attorney's fees and their counsel's accompanying declaration is denied. Since we have determined the \$25,000 penalty was an award of sanctions, not attorney's fees, the materials are not necessary to our resolution of this appeal.

to Code of Civil Procedure section 909 that we make independent factual findings as to when Pabros actually learned of Mr. Mattei's death. We deny both requests as unnecessary to the resolution of this appeal.

**DISPOSITION**

The order is affirmed. Costs on appeal are awarded to Respondents.

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Siggins, P.J.

WE CONCUR:

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Petrou, J.

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Wiseman, J.\*

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\* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.